

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 16

UNITED STATES PATENT AND TRADEMARK OFFICE

MAILED

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BOARD OF PATENT APPEALS
AND INTERFERENCES

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JACK RICHARD SIMPSON

Appeal No. 2001-0312
Application No. 09/054,564

ON BRIEF

Before ABRAMS, NASE and BAHR, Administrative Patent Judges.

BAHR, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1-44. Appellant filed an amendment (Paper No. 11) subsequent to the final rejection canceling claims 36-44. Despite the examiner's statement on page 2 of the answer (Paper No. 15) that "[n]o amendment after final has been filed," we interpret the examiner's acknowledgment of "[t]he cancellation of claims 36-44 in paper no. 11" in a second Notification of Non-Compliance with 37 CFR § 1.192(c) (Paper No. 12) as an

indication that the amendment canceling claims 36-44 has been approved for entry.¹ Thus, the examiner having withdrawn the rejection of claims 2, 4, 6, 7, 10-27 and 30-35, the only claims remaining before us on appeal are claims 1, 3, 5, 8, 9, 28 and 29.

BACKGROUND

The appellant's invention relates to corrugated board rotary cutting dies and the stripping of scrap therefrom, and more particularly to a stripping member for efficiently and effectively directing scrap away from an edge trimming cutting die (specification, page 1). A copy of the claims under appeal is set forth in the appendix to the appellant's brief² (Paper No. 13).

The examiner relied upon the following prior art reference in rejecting the appealed claims:

Smithwick, Jr. et al. (Smithwick)	5,636,559	Jun. 10, 1997
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Claims 1, 3, 5, 8, 9, 28 and 29 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Smithwick.

¹ We note, however, that the amendment canceling claims 36-44 has not been clerically entered.

² Any references to the appellant's brief in this decision are to the corrected appeal brief filed May 30, 2000 (Paper No. 13).

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellant regarding the above-noted rejection, we make reference to the answer for the examiner's complete reasoning in support of the rejection and to the brief for the appellant's arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to the appellant's specification and claims, to the Smithwick patent, and to the respective positions articulated by the appellant and the examiner. As a consequence of this review, we make the determinations which follow.

Claim 1 reads on the Smithwick cutting die as follows. Smithwick discloses a rotary die cutter 100 for cutting corrugated board comprising a base (die board 110) formed into an arcuate shape and adapted to be mounted to a rotary cylinder (die roll 102), at least one trim cutting blade (the U-shaped cutting rule 112 defining a recess 114) secured to the die board and extending radially outwardly therefrom for trimming an outside trim piece (strip scrap) from the sheet of corrugated board to form a slot, and at least one trim stripper (scrap ejector 10) for engaging and stripping the strip scrap, by holding the scrap against an anvil cylinder 104 (column 3, lines 64-66). As illustrated in Figures 2 and 3, each scrap ejector 10 includes a plurality of lugs 16 having a pair of angled side walls 20, 22 which extend radially outwardly to an outer contact face 24,

one of the side walls being angled outwardly and away from the cutting rule 112.

Further, as explained in column 3, lines 55-58, "[t]he height of the scrap ejector 10 is such that the outer faces 24 extend beyond the cutting edges of the rule 112 to ensure proper ejection of the scrap."

Appellant argues on page 6 of the brief that the scrap ejectors are all positioned inside of the trim blade and as such function only to eject scrap cut from interiorly of the product sheet disposed inside the trim blade. As for the limitation in claim 1 that the trim stripper be mounted outside the trim cutting blade, we note, as the examiner has (answer, page 3), that claim 1 does not provide any reference for defining which side of the blade is the outside. Thus, from our perspective, either side of the U-shaped cutting rule 112 may be viewed as the outside. In any event, in that the scrap ejectors 10 are disposed on the sides of the U-shaped cutting rules 112 which fall outside of the area defining the final product (a rectangular board having slots cut therein)³, each of the scrap ejectors 10 is mounted outside a trim cutting blade (U-shaped cutting rule) as called for in the claim. As for appellant's contention that the strip scrap cut from the board to form a slot is not an "outside trim piece," we perceive nothing in the strip scrap removed by the scrap ejector 10 of Smithwick which distinguishes it from an "outside

³ In this respect, we observe that the final product is defined by the cutting rules forming a rectangular shape in combination with the U-shaped cutting rules forming the slots, not merely by the rectangular shape alone.

trim piece" (i.e., a piece of material which is trimmed off the board from an exterior edge thereof).

For the foregoing reasons, appellant's arguments do not persuade us of any error in the examiner's determination that the subject matter of claim 1 is anticipated by Smithwick. Thus, we shall sustain the examiner's rejection of claim 1, as well as claim 5⁴ which appellant groups therewith (brief, page 4), as being anticipated by Smithwick.

Claim 8 depends from claim 1 and further requires that the trim stripper include two separate angled upper surfaces that enable the trim stripper to be reversed. Appellant asserts (brief, page 9) that "[c]learly, the individual lugs of Smithwick cannot be reversed," but provides no evidence or explanation as to why this is the case. Based on our review of the scrap ejectors 10 disclosed in column 3, lines 30-34, and illustrated in Figures 2 and 3, Smithwick's scrap ejectors appear fully capable of being reversed if desired. Thus, the examiner's position in this regard appears quite reasonable to us. Accordingly, we shall sustain the rejection of claim 8, as well as claim 9 which appellant has grouped therewith (brief, page 4).

⁴ While the limitation of a durometer of "approximately 30-60" in claim 5 finds support in the claim as originally filed, there is an inexplicable inconsistency between the durometer recitation of claim 5 and the "70 to 100 durometer" disclosed on page 10 of appellant's specification. Accordingly, in the event of further prosecution, the examiner may wish to consider whether claim 5 is definite under the second paragraph of 35 U.S.C. § 112. See *In re Cohn*, 438 F.2d 989, 993, 169 USPQ 95, 98 (CCPA 1971).

Turning now to the method of claim 28, Smithwick discloses directing sheet material such as corrugated paper board between an upper die roll 102 and a lower anvil roll 104 (column 2, lines 61-64), engaging a strip scrap with a scrap ejector 10 (column 3, lines 64-66), and cutting the strip scrap with the U-shaped cutting rule 112 while compressing the scrap ejector between the die roll 102 and corrugated paper board as the board passes between the die roll 102 and the anvil roll 104 (column 3, lines 58-62). The scrap ejector holds the scrap against the anvil by being released and expanded, after passing through the nip, so as to extend outwardly beyond the cutting edges of the rule 112.

Appellant's arguments on page 11 of the brief that the scrap ejector of Smithwick is not disposed outside a trim blade and does not include an angled outer surface are not found persuasive for the reasons discussed above with regard to claim 1. Further, for the reasons discussed above, we consider the strip scrap discussed by Smithwick to be a "cut trim edge portion" and thus conclude that Smithwick teaches a procedure for stripping a cut trim edge portion from the trim blade as called for in claim 28.

Inasmuch as appellant's arguments are not persuasive of error in the examiner's determination that claim 28 is anticipated by Smithwick, we shall also sustain the examiner's rejection of claim 28, as well as claim 29 which appellant has grouped therewith (brief, page 5).

CONCLUSION

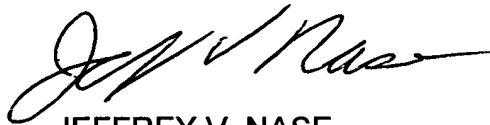
To summarize, the decision of the examiner to reject claims 1, 3, 5, 8, 9, 28 and 29 under 35 U.S.C. § 102(e) is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

AFFIRMED



NEAL E. ABRAMS
Administrative Patent Judge



JEFFREY V. NASE
Administrative Patent Judge



JENNIFER D. BAHR
Administrative Patent Judge

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LARRY L. COATS
RHODES COATS & BENNETT
P.O. BOX 5
RALEIGH, NC 27602